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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/703,349	10/31/2000	Don Rutledge Day	AUS920000683US1	3064

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EXAMINER

MAURO JR, THOMAS J

ART UNIT

PAPER NUMBER

2143

DATE MAILED: 04/02/2004

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/703,349

Applicant(s)

DAY ET AL.

Examiner

Thomas J. Mauro Jr.

Art Unit

2143

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 March 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.


NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.Claim(s) objected to: None.Claim(s) rejected: 1-7.Claim(s) withdrawn from consideration: None.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: See Continuation Sheet


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Continuation of 5. does NOT place the application in condition for allowance because: the arguments presented are not persuasive to distinguish the current claims over the prior art used in the final rejection (See Final Rejection).


(A) Applicant argues that Kellner does not teach "associating each of a plurality of gestures to separate commands of an application program interface (API) for communicating in real time between the participants; and transmitting an associated command to the API for communicating between the participants".

In response to argument (A), Kellner discloses that gestures, i.e. movements, received by the video camera are read into the system and processed in order to alter the image according to the specific gesture picked up by the camera. Each gesture received, whether the same, similar or completely different from another gesture, will need to be processed using different, i.e. separate, commands of an API in order to render the image to represent the actual physical gesture that occurred. For example, two different gestures, i.e. waving a hand and smiling, will require different commands/instructions to be used by the system in order to alter the image to represent the actual physical gesture. Thus, the commands and instructions necessary to show a hand waving and a face smiling will be different and separate. Therefore, separate gestures, i.e. hand waving or face smiling, requires separate commands/instructions, i.e. instructions to alter the image for a hand wave and a smile.

(B) Applicant argues that in claim 2, Hatlelid does not teach or suggest that a different behavioral movement for a given trigger exists in a table depending on the occurrence number. This language does not commensurate with the claim language in either claims 2, 5 or 6. Applicant's arguments filed 3/23/2004 with respect to claims 2, 5 and 6 have been fully considered but they are not persuasive.

In response to applicant's argument (B) that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., different behavioral movements for a given trigger exists in a table depending on the occurrence number) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). During patent examination and prosecution, claims must be given their broadest reasonable interpretation. In *re Van Geuns*, 988 F.2d 1181, 1184, 26 USPQ2d 1057, 1059 (Fed. Cir. 1993); In *re Prater*, 415 F.2d 1393, 1404, 162 USPQ 541, 550 (CCPA 1969). Giving the instant claims their broadest reasonable interpretation, "means for determining a state of the actual physical gesture made by the one participant; and means for accessing an associative mapping for an action associated with the determined state of the actual physical gesture" is broad enough to read on the teaches presented in Hatlelid.

Continuation of 10. Other: This amendment is non-compliant because claims 2, 3 and 5 are not ORIGINAL claims as stated in the After-Final Amendment, but are amended from the previous set of claims presented in Amendment A (paper #4) filed 1/6/2004. .


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